IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5560 of 2012
and M.P.No.1 of 2012

Navadisha Educational Trust
No.635/1, 3rd Cross Street
Kalki Nagar
Near AG'S Colony VI Main Road
Velachery, Chennai - 600 042.
Represented by its Managing Trustee
Ms.Rukmani Ramachandran. ... Petitioner

Vs.

1.The Chief Commissioner of Income Tax
Chennai - III, 124, M.G.Road
Chennai - 600 034.

2.The Director of Income-tax
(Exemptions), 124, M.G.Road
Chennai - 600 034.

3.The Assistant Director of Income-tax
(Exemptions) - III
124, M.G.Road
Chennai - 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the first respondent and quash the impugned order in C.No.CC III/19/10(23C)(vi)/10-11 dated 24.03.2011 and direct the 1st respondent to grant approval under Section 10(23C)(Vi) of the Act.

For Petitioner : Mr.R.Venkadesh Narayanan
For Respondents : Ms.Hema Muralikrishnan.

ORDER

The petitioner is an educational trust having been constituted pursuant to a Deed of Public Trust dated 28.05.1997, registered as Document No.1061 of 1997, on the file of Sub-

Registrar, Adyar. The preamble part of the Trust Deed states that the author of the Trust is deeply involved in the Montessori method of education of children. She has post-graduation in English from a reputed institution in Chennai in the year 1998 and has completed her International Diploma in Montessori Studies, awarded by the Association Montessori Internationale, having its head-quarters in Netherlands in the year 1991, successfully. The author of the Trust Deed Ms.Rukmani Ramachandran hails from a literary family and her mother is a Tamil writer and a classical dance teacher at Kalakshetra. Her grandfather was a freedom fighter and a renowned Tamil literary figure.

2. The author of the Trust has been in Montessori method of education for six years prior to the date on which the Trust Deed was registered and she is committed to the Montessori method of education and she edited Dr.Maria Montessori's lectures into a book titled "Creative Development in the Child- The Montessori Approach". The author of the Trust was desirous of establishing a Trust of Public nature under the name "Navadisha Educational Trust" and the objects of the Trust being to work for intergrated development of children, to establish, run, maintain and carry on educational institution or institutions vocational training centres and polytechnics and if thought fit, to start or take over other educational institutions and to receive gifts or donation in cash or in kind either as contribution towards the corpus fund or for carrying out any specific purpose or objects of the Trust.

3. The petitioner applied for grant of exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 for the year 2009-10 dated 31.03.2010 in Form No.56D. The respondent vide communication dated 13.01.2011 called for certain details for considering the application for grant of exemption, which were furnished by the petitioner vide letter dated 04.02.2011. This was followed by a response dated 23.03.2011 to a proceedings issued by the Income Tax Officer (Head Quarters) dated 08.03.2011, wherein the petitioner stated about the objects of the Trust and the Trust has started a school and has been running the school for 13 years and that they adopted Montessori System of Education and a detailed note on the nature of the educational activities of the school was enclosed with the response dated 23.03.2011. Further the petitioner would state that for the past 13 years they have been in academics and running educational institutions and their objects neither provide for any commercial activities or addressing to the society in general nor they have conducted any activity of such nature. Thus, they reiterated that the Trust exists solely for the purpose of running educational institution and no other activity of any nature. A detailed note on "How the children

participate and learn" was enclosed with the response dated 23.03.2011.

4. The first respondent has passed the impugned order stating that Section 10(23C)(vi) of the Act stipulates that the institution/trust should exist solely for educational purpose and not for any other purpose including objects of general public utility. Further the first respondent stated that he has taken a stand in several cases that for the purpose of approval under Section 10(23C)(vi), the objects of the Trust/Institution should include only educational purpose and not for any other purpose. Therefore, the application made by the petitioner Trust was found not eligible for granting approval under Section 10(23C)(vi) of the IT Act and hence the application was rejected. Challenging the same, this writ petition has been filed.

5. Heard Mr.R.Venkadesh Narayanan, learned counsel for the petitioner and Ms.Hema Muralikrishnan, learned standing counsel for the respondents and carefully perused the materials placed on record.

6. I am of the considered view that the impugned order is an outcome of narrow and pedantic approach on the part of the first respondent, namely the Chief Commissioner of Income Tax. Though the first respondent in the impugned order has referred to the objects Trust, it lost sight of the fact that objects of Trust cannot be read in a truncated fashion. The first respondent was carried away by one of the objects of the Trust, namely "to work for the integrated development of children". Unfortunately, the first respondent did not take note of the documents, which were called for from the petitioner and furnished by the petitioner along with a letter dated 04.02.2011, after which there was personal hearing which was fixed and further documents were given and the petitioner has submitted a representation styled as "response to the notice dated 08.03.2011", wherein they have given a detailed write up on as to how the children participate and learn. Without considering all these aspects, the respondent, has mechanically passed the impugned order and also by stating that he has taken a stand in several cases that for the purpose of approval under Section 10(23c)(vi), the objects of the Trust should include only educational purpose. There is no finding by the first respondent that one of the objects of the Trust that "to work for the integrated development of children" does not include educational activity, more particularly, based on the materials furnished by the petitioner. There is not even a whisper that the materials furnished by the petitioner is either been found incorrect or is a false statement. Therefore, these observations would be sufficient to set aside the impugned order.

7. Nevertheless, learned counsel for Revenue sought to sustain the impugned order by referring to the decision of a Hon'ble Division Bench of High Court of Andhra Pradesh in R.R.M.Educational Society Vs.Chief Commissioner of Income Tax reported in [2011] 339 ITR 323 (AP). The Division Bench while considering the objects of the Society in the said case held that the main or primary objects are distributive, each and everyone of the objects must relate to "education" in order that the institution may be held entitled for the benefits under Section 10(23-c)(vi) of the Act. In paragraph 2 of the Judgement, the objects of the Society have been set out where apart from opening institutions, the said Society was desirous of opening hostels for poor students, organising workshop etc., Therefore, in my view, the said decision cannot be applied to the facts and circumstances of this case and the said decision is clearly distinguishable.

8. The next decision relied on by the learned counsel for Revenue is an order passed by a learned single Judge of this Court dated 11.03.2016 in the case of B.S.Abdul Rahman Institute of Science and Technology Vs. The Chief Commissioner of Income Tax in W.P.No.34102 of 2015. I am informed that the Society filed writ appeal against the said order and the writ appeal was withdrawn since due to subsequent events, the Society got a relief. Therefore, the issue which was considered in the case has to be left open and moreover, the Court rejected the plea of the said writ petitioner largely relying upon Clause 4 of the objects of the Trust. Hence, the said decision also does not apply to the facts of the case.

9. Learned counsel for the petitioner referred to the decision of a Division Bench of High Court of Delhi in the case of Jaypee Institute of Information Technology Society Vs. Director General of Income Tax (Exemption) reported in (2009) 227 CTR (Del) 124. In the said case, the claim for exemption under Section 10(23C)(vi) was rejected on the ground that the petitioner Institute is having multiple objectives, of which education is only one of them. While testing the correctness of the said order, the Hon'ble Division Bench observed that the order of the Chief Commissioner was a very narrow and pedantic approach. After referring to several decisions, it was held that the expression "any educational institution" occurring in Section 10(23C)(vi) of the Act, should be given a wider meaning. At this juncture, it would be relevant to quote paragraph 12 of the judgment, which reads as follows:

> "12. On the contrary, the Supreme Court has given wider meaning to the expression "any educational institution" occurring in Section 10(23C)(vi) of the Act. Under this phrase, even those institutions would be covered which

may or may not have to do anything with the university. The courts have expressed the opinion, by catena of judgments, that categories provided in the aforesaid provision are so different that the university cannot be the genus and "other educational institution" the species thereof. Once a college is established by an institution, that would come within the expression "other educational institution". {See - Addl Commissioner of Income Tax v. Aditanar Educational Institution, 224 ITR 310 (SC); Addl. CIT v. M/s. Hamdard Dawakhana (Wakf), 157 ITR 639 (Del); CIT v. M/s. Venkatasubbiah Reddiar (K.S.), 221 ITR 18 (Mad)}."

10. This Court had an occasion to test the correctness of the order passed by the Chief Commissioner in the case of Tamil Nadu Kalvi Kapu Arakkattalai Vs. Chief Commissioner of Income Tax reported in (2014) 90 CCH 0184 ChenHC. The order impugned in the said writ petition was an order rejecting the renewal of recognition sought for by the petitioner under Section 10(23C)(vi) on the ground that the said Trust is not existing solely for the purpose of education. This Court considered the statutory provisions and held as follows:

"14. In my view, while considering the claim for exemption, the substance of the claim would be more relevant than the form. In other words, the Authority should not be safely guided by the objects set out in various clauses in the Instrument of Trust (Deed of Trust). Rather, the authority should be guided by the activities of the Trust, as to how the funds are employed, since the exemption sought for is under Chapter -III of the Act, which deals with incomes which do not form part of the total income. Thus, under Chapter-III, more particularly, Sections 10 to 13A of the Act, the Act brings certain categories of exemption and incomes falling within those categories are completely exempt from the purview of the Act, as they are not at all to be included in the total income of the assessee. Therefore, such type of exemption/s has/ have to be distinguished from certain types of income, which are included in the total income of the assessee, but in respect of which statute provides relief by way of deduction in computing the total income, by granting rebate of tax and by granting certain other reliefs from the tax payers."

11. Thus, applying the decisions in the case of Jaypee Institute of Information Technology Society Vs. Director General of Income Tax (Exemption) reported in (2009) 227 CTR (Del) 124 and Tamil Nadu Kalvi Kapu Arakkattalai Vs. Chief Commissioner of Income Tax reported in (2014) 90 CCH 0184 ChenHC to the facts of the case on hand, the only conclusion that could be arrived is to hold that the impugned order is unsustainable.

Unfortunately, the first respondent has not even made any observation as regards the elaborate submissions made by the petitioner with regard to the manner in which they are conducting the institution for over 13 years as of 2011. Further, the specific assertion made by the petitioner that for all the years they have been on academics only, has not been found to be incorrect by the first respondent. Thus, on account of narrow interpretation of the provisions, an erroneous order has been passed.

Thus, for the above reasons, the writ petition is allowed and the impugned order is set aside . The first respondent is directed to consider the application of the petitioner and grant approval to the petitioner Trust under Section 10(23C)(vi) of the Act within a period of four weeks from the date of receipt of a copy of this order from the date of the application/relevant assessment year. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

gpa

To
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+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.48648
+1cc to Mr.Subbarayan Ayar, Advocate SR.No.48711

W.P.No.5560 of 2012
and M.P.No.1 of 2012

PVS(CO)
GN(13/08/2018)